IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 170 of 1988
with
CRIMINAL APPEAL No 171 of 1988
With
CRIMINAL APPEAL No. 173 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAMKHAMBHALIA AGRICULTURAL PRODUCE MARKET COMMITTEE
Versus
DAHYALAL KARSANDAS and ANOTHER.

Appearance:
MR. Ketan Shah with Mr. KG VAKHARIA for appellant.
MR MANOJ N POPAT for Respondent No. 1
Mr. P.G. Desai, Public Prosecutor for Respondent No.2

CORAM : MR.JUSTICE H.R.SHELAT
Date of decision: 01/10/1999

ORAL JUDGEMENT

Being aggrieved by the judgment and order dated 2nd September 1986 acquitting the respondent, of the offences punishable under Section 35 & 36 of the Gujarat Agricultural Produce Market Act, 1963 (for short the `Act') for violating Section 6 & 8 of the Act, the

original-complainant has preferred these appeals calling in question the legality and validity of acquittal.

2. In all the three appeals, the questions of law and facts being common, these three appeals were ordered to be heard together and disposed of by a common judgment so as to avoid hardship to the parties, waste of time and conflicting judgments. Accordingly, these three appeals are heard and by this common judgment all the three appeals shall stand disposed of.

3. Necessary facts may, in brief, be stated. Under the Act, relating to Khambhalia Taluka, Agricultural Produce Market Committee came to be formed from 18th November 1976. A notification in that regard was issued. After the Committee started functioning under the Act it was incumbent upon all those who were trading within the trading limits of the Market Committee to obtain the licence under Sec. 8 of the Act without which trading in the area came to be made illegal and punishable. The respondents had taken the licence, but after the period of licence expired, they without getting the licence renewed, continued to carry on their business within the local limits of the Market Committee. They thereby violated Section 6 & 8 of the Act made punishable under Sec. 36 of the Act. Not only that but the respondents also did not make the payment of the cess being levied by the Committee and thereby committed the offence punishable under Section 35 of the Act. Rashmin Jethashankar Shukla is serving as the Secretary of the Market Committee. The Secretary,it seems came to know that respondents were carrying on their business within the market area without the licence and without paying any cess and thereby offences as stated hereinabove were committed. He therefore undergoing necessary procedure and obtaining necessary permission from the Market Committee to lodge the complaint, filed the complaints in the Court of the Judicial Magistrate (F.C.) at Jamkhambhalia which came to be registered as Criminal Cases Nos. 354, 356 & 363 of 1986. On being served with the summons, the respondents appeared before the learned Judicial Magistrate (F.C.). They when the plea was taken pleaded not guilty and claimed to be tried. The Secretary of the Committee appeared and deposed before the Court and produced the copies of the Notification. Appreciating such evidence before him, the learned Magistrate acquitted the respondent holding that the complainant, i.e. the appellant failed to establish the charge levelled against the respondent. It is against that judgment and order dated 2nd September 1987, the present appeals are filed calling in question the

legality and validity of the order of acquittal.

4. Assailing the judgment and order of acquittal, learned advocate, Mr. Ketan Shah, submits that the learned Magistrate fell into error in appreciating the evidence. The complainant had without missing any link deposed before the Court as to how the breach of the provisions of the Act were committed, constituting the offence, made punishable under Section 35 & 36 of the Act. The learned Magistrate misconstrued the evidence and provisions of the Act applicable and erroneously concluded against the complainant-present appellant. It is also his submission that the notification about the establishment of the Market Committee was duly published consistent with the provisions of the Act, but the learned Magistrate has overlooked that fact and erred in recording the finding against the present appellants. He has urged to allow the appeal, set aside the judgment and order of the learned Magistrate and convict the respondent.

5. Mr. Manoj Popat, learned advocate for the respondent No.1 has supported the judgment and order of the learned Magistrate, while Shri P.G. Desai, learned P.P. has submitted to pass the order as deemed fit as he sees no good cause to assail the impugned order.

6. Establishment of the Market Committee has to be brought to the notice of the people so that they can know how their business activities are to be regulated and what they are supposed to do for the purpose of carrying on their business within the area of the Market Committee. Section 6 of the Act therefore provides that for declaration of the market area, a Notification by the Director is required to be published in Official Gazette specifying the area in the notification. Such notification is also to be published in `Gujarati' in a newspaper having circulation in the said area and in such other manner as may be prescribed. The Supreme Court, in the case of Govind Lal Chaggan Lal Patel Vs. The Agricultural Produce Market Committee & Ors - AIR 1976 SC 263, has dealt with the issue when the same was raised for consideration qua the notification and object of Section 6 of the Act. It is laid down that unlike the Bombay Act No.22 of 1939, the notification issued under Section 6(5) of the Gujarat Act, like that under Section 6(1) must also be published in `Gujarati' in a newspaper having circulation in the particular area. This requirement is mandatory and must invariably be fulfilled. A violation is likely to affect valuable rights of the traders and agriculturists because in the

absence of proper and adequate publicity their right of trade and carry on business would be hampered since they would not be having the opportunity to offer their objections and suggestions, with the result they would be losing the opportunity which the Statute clearly mandates to grant. Further, violation of the provisions of Section 8 and 36 of the Act leads to penal consequences. Hence, if the notification is not at all published in the newspaper, it lacks legal validity and no prosecution can be founded upon its breach. In view of such decision, and the provision of Section 6 of the Act, if the Market Committee wants to prosecute a person trading within its limits without any licence, it has to first establish that the notification as mandated by Section 6 of the Act was published. Unless that is established, the Court will not be able to convict the person even on other aspects of the case, the prosecution or the complainant has succeeded in establishing the charge levelled against the accused.

7. How issuance of the notification can be proved was also the question posed before the M.P. High Court in the case of Baijnath & Others vs. The State - AIR 1953 Madhya Bharat 196, wherein keeping Section 78 of the Evidence Act in mind, it is held that notification, issued by the State Government under the authority of an Act, must be produced and proved in accordance with the said provision of the Evidence Act before the Court can take judicial notice thereof. This decision, to which I agree, makes it clear that the Court is not entitled to take a judicial notice of the notification published in the Gazette or the local daily. The fact of the publication of the notification has to be proved in the manner provided for in Section 78 of the Evidence Act.

8. In the case on hand, the prime issue is about publication of the notification in accordance with Section 6 of the Act. No doubt, the Secretary who has filed the complaint has in his evidence stated about publication of the notification but his mere statement on oath is not sufficient. As stated above, the notification or copy of the Gazette in which the notification is published and copy of the newspaper must be produced on record. The complainant cannot rest contented with his own statement on oath.

9. A perusal of the evidence of the complainant makes it clear that a copy of the Gazette or the concerned newspaper is not produced on record. Of course, a copy of notification Mark 15/1 appears to have been produced but the same is not proved in accordance

with the provisions of the Evidence Act and not admitted in evidence. There is therefore no evidence on record indicating that the notification in question was duly published in the official gazette as well as in the newspaper having wide circulation in the area. The appellant has assigned no appealing reason for non-production of the copy of the gazette and the newspaper. It is, thus, clear therefore that publication of the notification is not established as per the law made clear hereinabove. When that is the case, the learned Judicial Magistrate was perfectly right in holding that the charge levelled against the present respondent cannot be said to have been proved because in the absence of that proof about publication of notification the prosecution cannot be launched.

10. With regard to the charge of not paying the cess and thereby committing the offence punishable under Section 35 of the Act, there is absolutely no evidence on record. The appellant is silent in his evidence. He has even not alluded on this point. The learned advocate representing the appellant also on query, though laboured much, failed to point out any thing on the record, not even an iota of evidence in this regard. There is, in short, absolutely no evidence in connection with the alleged offence made punishable under Section 35 of the Act. The learned Judicial Magistrate was, therefore, right in acquitting the respondent relating to the second offence also.

11. For the aforesaid reasons, I see no justification to upset the judgment and order passed by the learned Judicial Magistrate. The same, being just and proper and quite in consonance with the provisions of law, are required to be maintained. In the result, these appeals, being devoid of merits, are required to be dismissed and are accordingly dismissed.

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